

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0882-IWD-E    TCEQ ID: RN104367826    CASE NO.: 33739**  
**RESPONDENT NAME: R & S CONCRETE, L. L. C.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> INDUSTRIAL WASTE DISCHARGE	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> ¼ mile off FM 521 on West Sycamore Street near the City of Fresno, Fort Bend County</p> <p><b>TYPE OF OPERATION:</b> Concrete batch plant</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 24, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="padding-left: 20px;"><b>TCEQ Attorney:</b> Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="padding-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Ms. Suzanne Walrath, Air Enforcement Section, MC 219, (512) 239-2134</p> <p style="padding-left: 20px;"><b>TCEQ Regional Contact:</b> Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3500</p> <p style="padding-left: 20px;"><b>Respondent:</b> Mr. Ruben Salinas, President, R &amp; S Concrete, L.L.C., 14508 Chrisman Road, Houston, Texas 77039</p> <p style="padding-left: 20px;"><b>Respondent's Attorney:</b> Mr. Jason A. Hill, Attorney, Meyer Knight and Williams, L.L.P., 8100 Washington Avenue, Suite 1000 Houston, Texas 77007</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> April 23, 2007</p> <p><b>Date of NOE Relating to this Case:</b> May 16, 2007</p> <p><b>Background Facts:</b></p> <p>An EDPRP was filed on September 18, 2007. The Respondent received notice of the EDPRP on September 19, 2007, as evidenced by the signature on the return receipt "green card." The Respondent filed an answer on October 8, 2007. It was referred to SOAH on December 17, 2007 and an Agreed Order was signed by the Respondent on January 30, 2008. A Motion to Remand was filed on February 4, 2008.</p> <p><b>IWD</b></p> <p>1. Failed to comply with the permit effluent limits [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and General Permit No. TXG110601, Part III, Section A].</p> <p>2. Failed to submit the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending December 31, 2006, the Annual 24-Hour Acute Biomonitoring Report, and the Annual Metal Testing Report for the monitoring period ending February 28, 2006 [TEX. WATER CODE § 26.121(a) and General Permit No. TXG110601, Part IV, Standard Permit Conditions, No. 7(f)].</p>	<p><b>Total Assessed:</b> \$4,560</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid to General Revenue:</b> \$4,560</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days, submit Discharge Monitoring Reports for both the Annual 24-Hour Biomonitoring Report and the Annual Metal Testing Report for the monitoring period ending February 28, 2006.</p> <p>2. Within 45 days, submit written, notarized certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with the above Ordering Provision and effluent limits of TCEQ General Waste Discharge Permit No. TX6110601.</p> <p><b>Corrective Action Taken:</b></p> <p>The Executive Director recognizes that the Respondent has submitted the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending December 31, 2006.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

TCEQ

DATES	Assigned	21-May-2007	Screening	7-Jun-2007	EPA Due	
	PCW	13-Nov-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	R & S Concrete, L. L. C.		
Reg. Ent. Ref. No.	RN104367826		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	33739	No. of Violations	2
Docket No.	2007-0882-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$4,000</b>
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>14% Enhancement</b>	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$560</b>
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Notes	The respondent has received two NOVs with same or similar violations, and two NOVs without same or similar violations.
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<b>Culpability</b>	<b>No</b>	<b>0% Enhancement</b>	<b>Subtotal 4</b>	<b>\$0</b>
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Notes	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply</b>	<b>0% Reduction</b>	<b>Subtotal 5</b>	<b>\$0</b>
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes	The Respondent does not meet the good faith criteria.
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<b>Total EB Amounts</b>	<b>\$344</b>	<b>0% Enhancement*</b>	<b>Subtotal 6</b>	<b>\$0</b>
<b>Approx. Cost of Compliance</b>	<b>\$2,450</b>	<b>*Capped at the Total EB \$ Amount</b>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$4,560</b>
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## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

<b>Adjustment</b>	<b>\$0</b>
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Notes	
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<b>Final Penalty Amount</b>	<b>\$4,560</b>
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## STATUTORY LIMIT ADJUSTMENT

<b>Final Assessed Penalty</b>	<b>\$4,560</b>
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## DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>0% Reduction</b>	<b>Adjustment</b>	<b>\$0</b>
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Notes	Deferral not offered for non-expedited settlement.
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## PAYABLE PENALTY

<b>\$4,560</b>
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Screening Date 7-Jun-2007

Docket No. 2007-0882-IWD-E

PCW

Respondent R &amp; S Concrete, L. L. C.

Policy Revision 2 (September 2002)

Case ID No. 33739

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104367826

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 14%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The respondent has received two NOVs with same or similar violations, and two NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 14%

Screening Date 7-Jun-2007

Docket No. 2007-0882-IWD-E

PCW

Respondent R &amp; S Concrete, L. L. C.

Policy Revision 2 (September 2002)

Case ID No. 33739

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104367826

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a), General Permit No. TXG110601, Part III, Section A, Permit Requirements

Violation Description Failed to comply with the permit effluent limits as documented by a file review conducted on April 23, 2007. See attached table.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

61 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended for the months that the permit limits were exceeded.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$292

Violation Final Penalty Total \$1,140

This violation Final Assessed Penalty (adjusted for limits) \$1,140

**Economic Benefit Worksheet**

Respondent R & S Concrete, L. L. C.  
 Case ID No. 33739  
 Reg. Ent. Reference No. RN104367826  
 Media Water Quality  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,000	1-Jun-2006	1-Jul-2008	2.1	\$14	\$278	\$292
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost for additional oversight and sampling which could have reduced or alleviated the exceedances. Date required is the date the noncompliance started and the final date is the projected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$292

<b>Screening Date</b> 7-Jun-2007		<b>Docket No.</b> 2007-0882-IWD-E		<b>PCW</b>	
<b>Respondent</b> R & S Concrete, L. L. C.		<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 33739		<i>PCW Revision May 25, 2007</i>			
<b>Reg. Ent. Reference No.</b> RN104367826					
<b>Media [Statute]</b> Water Quality					
<b>Enf. Coordinator</b> Suzanne Walrath					
<b>Violation Number</b> 2					
<b>Rule Cite(s)</b> Tex. Water Code § 26.121(a), General Permit No. TXG110601, Part IV, Standard Permit Conditions, No. 7(f)					
<b>Violation Description</b>		Failed to submit the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending December 31, 2006, the Annual 24-Hour Acute Biomonitoring Report, and the Annual Metal Testing Report for the monitoring period ending February 28, 2006.			
<b>Base Penalty</b>					\$10,000

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
<b>OR</b>	<b>Harm</b>					
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
	<b>Actual</b>					
	<b>Potential</b>				<b>Percent</b>	0%

<b>&gt;&gt; Programmatic Matrix</b>						
<b>OR</b>	<b>Falsification</b>					
	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>			
	<b>Actual</b>					
	<b>Potential</b>				<b>Percent</b>	10%

<b>Matrix Notes</b>	100% of the rule requirement was not met.
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<b>Adjustment</b>	\$9,000
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	\$1,000
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<b>Violation Events</b>													
Number of Violation Events	3												
	91 Number of violation days												
<i>mark only one with an x</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>daily</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily		monthly		quarterly		semiannual		annual		single event	x
daily													
monthly													
quarterly													
semiannual													
annual													
single event	x												
<b>Violation Base Penalty</b>													
\$3,000													

Three single events are recommended for the one quarterly report that was not submitted timely, and for two annual reports that were not submitted, as documented by the record review conducted on April 23, 2007.	
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<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
Estimated EB Amount	\$52	Violation Final Penalty Total	\$3,420
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		\$3,420	

## Economic Benefit Worksheet

**Respondent** R & S Concrete, L. L. C.  
**Case ID No.** 33739  
**Reg. Ent. Reference No.** RN104367826  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$450	28-Feb-2006	15-Jun-2008	2.3	\$52	n/a	\$52

Notes for DELAYED costs

These are estimated costs to submit the reports, beginning on the date the first report was due, and ending on the projected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
*Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$450

TOTAL

\$52



**R & S CONCRETE, L. L. C**  
**DOCKET NO. 2007-0882-IWD-E**  
**ENFORCEMENT CASE NO. 33739**  
**EFFLUENT TABLE**

Month	Total Suspended Solids Daily Maximum Permit Limit = 65 Mg/L	pH Maximum Permit Limit = 9.0 SU
June 2006	512	11.9
July 2006	173	11.4
Mg/L = milligrams per SU - standard units		

# Compliance History

Customer/Respondent/Owner-Operator: CN601047657 R & S Concrete, LLC Classification: AVERAGE Rating: 2.40  
 Regulated Entity: RN104367826 R & S CONCRETE BATCH PLANT Classification: AVERAGE Site Rating: 5.00  
 ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 77381  
 AIR NEW SOURCE PERMITS REGISTRATION 72962  
 AIR NEW SOURCE PERMITS AFS NUM 4815701695  
 WASTE WATER GENERAL PERMIT PERMIT TXG110601  
 Location: ONE QUARTER MILE OFF FARM-TO-MARKET 521 ON Rating Date: 9/1/2006 Repeat Violator: NO  
 WEST SYCAMORE STREET, FRESNO, FORT BEND  
 COUNTY  
 TCEQ Region: REGION 12 - HOUSTON  
 Date Compliance History Prepared: June 12, 2007  
 Agency Decision Requiring Compliance Enforcement  
 Compliance Period: June 12, 2002 to June 12, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Suzanne Walrath Phone: 512/239-2134

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 05/18/2006 (462732)  
 2 07/21/2006 (530628)  
 3 07/21/2006 (530629)  
 4 07/21/2006 (530630)  
 5 10/17/2006 (553317)  
 6 10/17/2006 (553318)  
 7 10/17/2006 (553319)  
 8 02/12/2007 (511487)  
 9 05/16/2007 (557816)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/10/2006 (454971)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(1)  
 30 TAC Chapter 116, SubChapter F 116.615(8)  
 5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: PERMIT 72962, GC No. 8

Description: Failure to maintain a copy of the standard permit on site.

Date: 05/18/2006 (462732)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)

5C THC Chapter 382, SubChapter D 382.085(b)  
Rqmt Prov: PERMIT Standard Permit No. 77381, GC #8  
Description: Failure to maintain copy of permit for new concrete batch plant.  
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)  
5C THC Chapter 382, SubChapter D 382.085(b)  
Rqmt Prov: PERMIT Standard Permit No. 72962, GC #9  
Description: Failure to control dust while performing cleaning of air filters and record/report emissions. Category B19.a.g.(1)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter D 382.085(b)  
Rqmt Prov: PERMIT Standard Permit No. 72962, SC #3E  
Description: Failed to control or minimize dust emissions when entering the facility. Category B19.a.g.(1)

Date 06/30/2006 (530630)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

Date 07/31/2006 (553317)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
R & S CONCRETE, L.L.C.  
RN104367826

§  
§  
§  
§  
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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2007-0882-IWD-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding R & S Concrete, L.L.C. ("R & S") under the authority of TEX. WATER CODE chs. 7 and 26, and 30 TEX. ADMIN. CODE chs. 70 and 305. The Executive Director of the TCEQ, represented by the Litigation Division, and R & S represented by Jason A. Hill of the law firm Meyer Knight and Williams, L.L.P., appear before the Commission and together stipulate that:

1. R & S owns and operates a concrete batch plant located at 1/4 mile off FM 521 on West Sycamore Street near the City of Fresno, Fort Bend County, Texas (the "Plant").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and R & S agree that the Commission has jurisdiction to enter this Agreed Order, and that R & S is subject to the Commission's jurisdiction.
4. R & S received notice of the violations alleged in Section II ("Allegations") on or about May 18, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by R & S of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of four thousand five hundred sixty dollars (\$4,560.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). R & S has paid four thousand five hundred sixty dollars (\$4,560.00) of the administrative penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and R & S have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that R & S has submitted the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending December 31, 2006.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that R & S has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. R & S is alleged to have violated 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and General Permit No. TXG110601, Part III, Section A, Permit Requirements by failing to comply with the permit effluent limits as documented by a file review on April 23, 2007. See table below.

Month	Total Suspended Solids Daily Maximum Permit Limit = 65 Mg/L	pH Maximum Permit Limit = 9.0 SU
June 2006	512	11.9
July 2006	173	11.4
Mg/L = milligrams per SU - standard units		

2. R & S is alleged to have violated TEX. WATER CODE § 26.121(a) and General Permit No. TXG110601, Part IV, Standard Permit Conditions, No. 7(f) by failing to submit the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending

December 31, 2006, the Annual 24-Hour Acute Biomonitoring Report, and the Annual Metal Testing Report for the monitoring period ending February 28, 2006, as documented by a record review conducted on April 23, 2007.

### III. DENIALS

R & S generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that R & S pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and R & S's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: R & S Concrete, L.L.C., Docket No. 2007-0882-IWD" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. R & S shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, R & S shall submit a Discharge Monitoring Reports (DMRs) for both the Annual 24-Hour Biomonitoring Report and the Annual Metal Testing Report for the monitoring period ending February 28, 2006. The DMRs should state in detail why these tests were not performed.
  - b. Within 45 days after the effective date of this Order, R & S shall submit written certification of compliance with Ordering Provision No. 2.a. and the effluent limits of TCEQ General Waste Discharge Permit No. TXG110601. The certification shall include detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

R & S shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Stephen Smith, WaterSection Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1452

3. The provisions of this Agreed Order shall apply to and be binding upon R & S. R & S is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If R & S fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, R & S's failure to comply is not a violation of this Agreed Order. R & S shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. R & S shall notify the Executive Director within seven days after R & S becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by R & S shall be made in writing to the Executive Director. Extensions are not effective until R & S receives

written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against R & S in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to R & S, or three days after the date on which the Commission mails notice of the Order to R & S, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

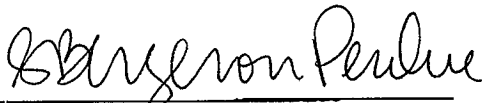


R. & S Concrete, L.L.C.  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



2/27/08

For the Executive Director

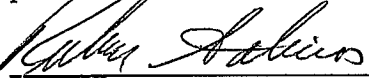
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or R. & S Concrete L.L.C.'s failure to timely pay the penalty amount, may result in:

- A negative impact on R & S Concrete L.L.C.'s compliance history;
- Greater scrutiny of any permit applications submitted by R & S Concrete L.L.C.;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against R & S Concrete L.L.C.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against R & S Concrete L.L.C.; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

1/30/08

Date

RUBEN SALINAS

Name (Printed or typed)

President

Title

Authorized representative of  
R & S Concrete, L.L.C.